

REMARKS

Formal Matters

Claims 1-12 constitute all currently pending claims in the application. Claims 1-10 are amended. Claims 11 and 12 are newly added. Applicant respectfully submits that new claims 11 and 12 are amply supported by the present disclosure and add no impermissible new matter.

Applicants thank the Examiner for acknowledging the receipt of priority documents submitted under 35 U.S.C. § 119(a)-(d). Applicants further thank the Examiner for initialing the Information Disclosure Statement (IDS) submitted on July 11, 2003.

The Examiner does not indicate that the drawings filed with the application on July 11, 2003 have been accepted. The Examiner is respectfully requested to acknowledge such acceptance in the next PTO communication.

The Examiner incorrectly states that the application was filed on October 24, 2002. The Examiner is respectfully requested to indicate that the application was, in fact, filed on July 11, 2003.

The Examiner has also incorrectly indicated the rejected claims under 35 U.S.C. § 101 and 35 U.S.C. § 102. Applicants, therefore, assume that the Examiner intended to reject claims 1-10 under both of the above cited sections. The Examiner is respectfully requested, however, to clarify the rejected claims in the next PTO communication.

Claim Rejections Under 35 U.S.C. § 101

Claims 1-10 stand rejected under 35 U.S.C. § 101 because the claimed invention is allegedly directed to non-statutory subject matter. Applicants traverse this rejection for at least the following reasons.

First, although the Examiner contends that all of claims 1-10 are indefinite process claims, claims 6, 7 and 8 are directed to a telecommunication network, and a client terminal. Although the Examiner appears to contend that these claims are process claims which do not produce any “tangible result,” it is clear that they are both directed to an apparatus. As such, Applicants submit that these claims clearly recite statutory subject matter.

Second, claims 9 and 10 are amended to recite computer executable instructions stored on a physical computer readable medium. Accordingly, Applicants submit that claims 9 and 10 now recite statutory subject matter.

Third, amended claim 1 recites “allocating network resources to said client terminal based on said QoS demands.” Applicants submit that the allocation of network resources to a client terminal clearly produces a concrete and tangible result, as it produces a practical and real world effect with respect to the client terminal’s access to network resources, and its ability to communicate over the network.

Thus, claim 1 and its dependent claims 2-5, 11 and 12, as well as claims 6-8, 9, and 10, clearly recite statutory subject matter within the scope of 35 U.S.C. § 101. Accordingly, we would respectfully request that the Examiner withdraw this rejection of claims 1-10.

Claim Rejections Under 35 U.S.C. § 102

Claims 1-10 stand rejected under 35 U.S.C. § 102(e) as allegedly being anticipated by U.S. Patent No. 6,728,748 to Mangipudi et al. (“Mangipudi”). Applicants traverse this rejection for at least the following reasons.

Mangipudi appears to describe a method and apparatus for adaptive service level management based on class of service (COS). As may be seen in Figs. 2, 3 and 7 of Mangipudi, its fundamental architecture appears to be one in which one or more clients 202 send requests to a routing host 200, which determines a class of service of the request, and routes the request to one of a number of server clusters 206, each of which are designed to support a different class of service.

Regarding claim 1, the Examiner cites a number of portions of Mangipudi as allegedly being anticipatory. The Examiner first cites col. 2, lines 21-45 of Mangipudi, which describes the background of the invention. This portion of Mangipudi appears to describe "known 'load balancing' implementations" which "have no mechanism to distinguish or prioritize users or transactions or requests." The Examiner further cites col. 5, lines 31-50 of Mangipudi, which state as follows:

Class of service (COS) involves the classification of incoming requests by the policy engine, into classes based on the Source IP address, Destination IP address, Port Number, URL, service or protocol, virtual site, transaction or request, or authenticated user. Backend server sites are clustered into virtual user definable cluster groups. Each cluster group can be managed/designated with a particular class of service. Based on its class, the connection/request will be directed to one of the clusters. The specific machine selected will depend upon the load balancing algorithm defined for the cluster or class, and implemented as a function of the parameters reported to the policy engine, for making load balancing decisions. An adaptive balancing module balances the number of service hosts in a cluster dynamically and guarantees optimal use of the resources by moving unused resources to service requests as needed. Based on information/parameters received via a UDP packet and based on service level commitments, the composition of the clusters can be changed dynamically by the adaptive

module so that service level metrics fall within committed levels.

(Mangipudi at col. 5, lines 31-50.)

This portion of Mangipudi clearly describes how a connection or request is classified according to its class of service, and directed to a cluster designated to that class of service. This portion further describes how the load balancing algorithm is defined for each cluster, and is implemented as a function of the parameters reported to the policy engine. Regarding the parameters on which the load balancing is based, Mangipudi states that “intelligent agents deployed on each of the back end servers monitor several server attributes/parameters and report back to the policy engine at the router.” (Mangipudi at col. 4, line 66 - col. 5, line 1.) Thus, the clusters are load balanced based on parameters measured from the cluster servers themselves.

The Examiner further cites col. 7, lines 20-55, col. 10, lines 32-45, and col. 9, lines 20-44. These portions of Mangipudi merely appear to further describe the categorizing, clustering, and load balancing system described above.

Amended independent claim 1 recites “receiving a user profile from a client terminal, said user profile comprising aggregated user behavior information recorded at said client terminal.” None of the cited portions of Mangipudi appear to describe recording user behavior information at a client terminal, or receiving a user profile from a client terminal, said user profile comprising such information. Furthermore, claim 1 recites “receiving QoS demands from said client terminal, said QoS demands determined based on said user profile.”

Furthermore, Mangipudi not only fails to teach a “user profile” as defined by claim 1, but also fails to teach “receiving QoS demands from said client terminal.” As explained in the above-quoted portions of Mangipudi, the clients 202 of Mangipudi merely send a request to a routing host 200, which determines the class of service of the request. Mangipudi does not appear to describe receiving demands for particular quality of service requirements from a client terminal.

Finally, amended claim 1 also requires “allocating network resources to said client terminal based on said QoS demands.” As explained above, Mangipudi appears to allocate network resources not based upon QoS demands, but rather, upon the class of service which the routing host 200 assigns to the request received from a client 202.

Thus, Mangipudi fails to teach each and every element of amended independent claim 1, much less the elements of its dependent claims 2-5, 10, 11 and 12. Accordingly, Applicants respectfully request that the Examiner withdraw the rejection of claims 1-5, 10, 11 and 12.

Regarding claims 6-9, the Examiner has failed to provide any evidence or argument to support the allegation that Mangipudi anticipates these claims. Applicants respectfully submit that, as claims 6-9 recite elements similar to those of claim 1, claims 6-9 are also patentable over Mangipudi for reasons analogous to those explained above. Accordingly, Applicants also respectfully request that the Examiner withdraw the rejection of claims 6-9.

Conclusion

In view of the above, reconsideration and allowance of this application are now believed to be in order, and such actions are hereby solicited. If any points remain in issue which the Examiner feels may be best resolved through a personal or telephone interview, the Examiner is kindly invited to contact the undersigned attorney at the telephone number listed below.

Applicants herewith petition the Director of the USPTO to extend the time for reply to the above-identified Office Action for an appropriate length of time if necessary. Unless a check is attached, any fee due under 37 U.S.C. § 1.17(a) is being paid via the USPTO Electronic Filing System (EFS). The USPTO is also directed and authorized to charge all required fees, except for the Issue Fee and the Publication Fee, to Deposit Account No. 19-4880. Please also credit any overpayments to said Deposit Account.

Respectfully submitted,



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